IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8655 of 2006
WITH
SPECIAL CIVIL APPLICATION No.8660 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
JITENDRABHAI GANSHYAMBHAI PATEL - Respondent(s)

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Appearance :
MS REETA CHANDARANA, AGP, for Petitioner(s) : 1,
MR YM THAKKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 04/11/2006
ORAL JUDGMENT

(1) Both these petitions challenge common order dated 10.10.2005 made by the 2nd Fast Track Court, Panchmahals at Godhra whereby Civil Misc. Application No.53 of 2004 and Civil Misc. Application No.54 of 2004 came to be granted setting aside common order dated 30.04.2004 made by the Director, Municipalities. Except

the difference in tenure of holding the posts by the petitioners and the amounts, the other facts, including the proceedings, are common and hence, both the petitions are taken up for hearing together.

(2) The facts which are undisputed reveal that both the petitioners were former Presidents of Nagarpalika, Godhra. Shri Jitendrakumar Ghanshyambhai Patel was President from 15.01.1998 to 14.01.1999, and Shri Bhikhabhai Manjibhai Buj was President from 08.01.1997 to 27.04.1997 and 05.05.1997 to 06.01.1998.

(3) It appears that different amounts of Education Cess were collected by Godhra Nagarpalika at different points of time from various residents of Godhra and the said amounts were not deposited within the prescribed period in the account of the State Government as required under the provisions of Gujarat Education Cess Act, 1962 (the Cess Act) read with Gujarat Education Cess Rules, 1962 (the Cess Rules). Not only that it appears that the said amount was utilized for the purpose of payment of salaries and pensions to the staff of the Nagarpalika, payment of electricity bills, etc., in

short, the Cess so collected was utilized by the Municipality for the purposes of the Municipality. The Director, Municipalities, issued show cause notice under Section 70 of the Gujarat Municipalities Act, 1963 (the Municipalities Act) calling upon both the petitioners to show cause why the amount of interest, which the Nagarpalika was called upon to pay to the Government, should not be recovered from the two persons. After hearing the petitioners the Director passed the impugned order on 30.04.2004 holding that Shri Bhikhabhai Manjibhai Buj and Shri Jitendrakumar Ghanshyambhai Patel were negligent in discharge of their duties and, therefore, were liable to refund or pay a sum of Rs.11,16,204/- and Rs.3,49,307/- to the Godhra Municipality as reimbursement of the interest paid by the Municipality. This order came to be challenged by both the gentlemen and the subordinate Court has allowed the application moved by both of them vide impugned order dated 10.10.2005.

(4) The State Government, who is the petitioner herein, has challenged the aforesaid order made by the subordinate Court holding that the fund which was comprised of the

Education Cess did not belong to the Municipality and as both the gentlemen were Presidents, when the fund was utilized for the purposes of Municipality, they were personally liable for the default of -- (i) not depositing the Cess so collected within the prescribed period, AND (ii) not seeking prior sanction of the State Government for utilizing the said fund. That in the circumstances, the order made by the subordinate Court, according to the learned Additional Government Pleader, was bad in law and was required to be struck down. That the subordinate Court had wrongly proceeded on the footing that there was violation of principles of natural justice when in fact number of opportunities had been granted to both the persons. It was, therefore, submitted that the order made by the subordinate Court be quashed and set aside and the order of the Director, Municipalities be restored. Apart from relying on provisions of Section 70 of the Municipalities Act, the learned AGP has also placed reliance on the provisions of Section 15 of the Cess Act to submit that there was a statutory obligation which was not discharged and hence, the order made by the the Director of Municipalities was just and proper.

(5) Though the subordinate Court has proceeded on the footing that there was violation of principles of natural justice when the Director, Municipalities framed the order without entering into the said aspect, both the petitions are required to be rejected for the reasons that follow hereinafter.

(6) When one reads Section 15 of the Cess Act it becomes clear that the Cess has to be collected by the relevant local authority. Rule 5 of the Cess Rules stipulates that all sums collected by any local authority shall be paid into the Government Treasury before the expiry of the next following month. Thus on a conjoint reading of the provisions of the Cess Act and the Cess Rules it becomes amply clear that the responsibility to collect the Cess and deposit in the Government Treasury is cast on the local authority. Section 2(vi) of the Cess Act defines “local authority” to mean a municipal corporation, municipality, notified area committee, nagar panchayat, village panchayat or gram panchayat or other body constituted under the relevant local authority law. Thus, on a plain reading it is not possible to hold that an individual who holds the post of a President is to be equated with the term “local authority”. Once there is a statutory definition

it is not possible to read anything more in the definition. Therefore, in absence of any legal obligation on the individual concerned, merely because he holds the post of a president of the governing body of the local authority he himself does not assume the characteristic of the local authority. Admittedly, both have separate legal existence and are independent of each other.

(7) There is one more aspect of the matter. Admittedly, as per the facts on record the amount of Cess collected was deposited in the account of the Municipality and the disbursement was made from the said account for the purposes of expenses of the Municipality. In fact the Director, Municipalities, refers to the communication dated 21.11.2002 from the Chief Officer, Godhra and records that entire financial transactions and all dealings on day-to-day basis are carried out under the Head of “Account of Nagar Palika', the President being the authority entitled to sign the financial transactions. It is further stated in the said communication that all receipts of the Nagarpalika and out goings are from the same head viz. 'Account of Nagar Palika' and there is no other head/account from which such financial transactions are conducted by the Municipality. Though, it was difficult to

state specifically as to for what purpose and to what extent the funds were spent from the account of Education Cess credited in the said account.

(8) Furthermore, it is not even the case of the petitioner-State that any funds have been misappropriated by either of the two individuals. It is not a case where the funds belonging to the Municipality and/or the State Government have been defalcated for personal purpose of the two individuals. Such a case would stand on an entirely different footing. Section 70 of the Municipalities Act talks of mis-application of any funds, but there also the Councillor concerned is required to be a party to such mis-application or the mis-application should have happened through the Councillor concerned or the mis-application would have been facilitated by gross neglect of his duty as a Councillor. However, the proviso under sub-section (1) of Section 70 of the Municipalities Act specifically states that the Councillor shall not be personally liable for any expense incurred by, or on behalf of the Municipality. Therefore, on a plain reading it is not possible to state that provisions of Section 70 of the Municipalities Act are applicable in the facts of the present case. Once the finding is, and that remains undisputed,

that the fund has been used for the purposes of expenses of the Municipality, the omission, if any, of the two individuals falls within the proviso to sub-section (1) of Section 70 of the Municipalities Act and no action is required to be initiated against the two individuals.

(9) Therefore, in any view of the matter, the petitioner-State Government has failed to establish as to how and in what manner the two persons can be treated to be liable for any of the defaults, for which they are charged viz. not depositing the amount in time and utilizing the amount without prior sanction. In the circumstances, the petitions do not merit acceptance and both the petitions are accordingly rejected. RULE discharged. There shall be no order as to costs.

(10) Registry to place a copy of this order in connected matter.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*